

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-325 (Sub-No. 2X)

FLORIDA MIDLAND RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN SUMTER AND LAKE COUNTIES, FL

Decided: February 22, 2001

By petition filed November 6, 2000,¹ Florida Midland Railroad Company (FMID) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 13.23-mile line of railroad known as the Leesburg Branch, extending from milepost ST-762.10 in Wildwood to milepost ST-773.71 in Leesburg and from milepost AS-800.76 to milepost AS-802.38 at Leesburg, in Sumter and Lake Counties, FL. Ro-Mac Lumber & Supply, Inc. (Ro-Mac), opposes the petition for exemption.² We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

FMID, a Class III rail carrier and wholly owned subsidiary of Pinsly Railroad Company (Pinsly),³ owns and operates three unconnected rail lines in central Florida. FMID began operations in 1987 after acquiring these lines from CSX Transportation, Inc. (CSXT).⁴ CSXT retained ownership of the Leesburg Branch right-of-way, which FMID leases. FMID owns the rail and track structure.

The Leesburg Branch is divided into two segments. The main segment is approximately 12 miles long and extends eastward from a connection with CSXT's central Florida main line at

¹ Notice of the filing was served and published in the Federal Register on November 24, 2000 (65 FR 70631).

² Ro-Mac timely filed and served a letter in opposition to the proposed abandonment, but presented no evidence or argument.

³ Pinsly is a noncarrier holding company that controls other Class III rail carriers in addition to FMID. One of those carriers, Florida Central Railroad Company (FCEN), is located a short distance southeast of the Leesburg Branch. According to FMID, certain of its administrative and operational functions are coordinated with FCEN.

⁴ See Florida Midland Railroad Company--Acquisition and Operation Exemption--Rail Lines of CSX Transportation, Inc., Finance Docket No. 31151 (ICC served Nov. 27, 1987).

Wildwood, FL, to Leesburg, FL, where the line ends. Within Leesburg, this east-west segment is crossed by a north-south segment approximately 1½ miles in length.

The Leesburg Branch is currently classified as Federal Railroad Administration excepted track, with a maximum speed limit of 10 miles per hour. According to FMID, the line consists of predominantly 100-pound rail rolled in the 1930s that is in fair condition, but there is also approximately 2.5 miles of 85-pound rail rolled in the 1920s that is in poor condition. In addition, ties and ballast on the line are in extremely poor condition. Only spot tie repairs have been conducted since FMID acquired the line in 1987, and FMID believes that most of the ties on the line are at least 25 years old. FMID states that a major tie replacement project, at an estimated cost of approximately \$1 million, would be required within the next year if the line is to remain in service, and that the cost cannot be economically justified given the minimal traffic remaining on the line and the line's inability to cover its own operating expenses.

FMID states that the line has lost 85% of its traffic over the last 7 years and has experienced a precipitous drop in revenues. Since 1998, the only active shippers on the line have been Allied Universal (Allied), Cutrale Citrus Juices (Cutrale), 84 Lumber, Harwood Brick (Harwood), and Ro-Mac.⁵ In 1998, a total of 340 carloads moved over the line generating revenues of \$178,019; and in 1999, 257 carloads moved over the line generating revenues of \$115,106. Then, on March 1, 2000, FMID imposed an \$885 per car surcharge on traffic moving to and from the Leesburg Branch. For the first 6 months of 2000, only 62 carloads moved over the line generating revenues of \$38,123. On July 1, 2000, FMID imposed a revised \$1,751 per car surcharge.⁶ No traffic has moved over the line since June 13, 2000.

According to FMID, Allied constructed a new facility in Tampa, FL, and closed its Leesburg facility in the summer of 1999; 84 Lumber has relocated its facility to Tavares, FL; Cutrale and Harwood ceased rail shipments after the surcharge; and certain traffic to Ro-Mac began moving by rail-truck transload. FMID asserts that Ro-Mac and Harwood have relied exclusively on trucks to reach their Leesburg facilities since June and March, respectively. In addition, FMID states that Harwood has other rail-served facilities in the region and that there are other transfer and transload facilities available within 15 to 20 miles of Leesburg. Thus, FMID

⁵ According to FMID, Allied and Cutrale were the major shippers, accounting for nearly three-fourths of the line's traffic since 1992. The most recent carload figures provided by FMID for the period 1998 through the first 6 months of 2000 show that 84 Lumber had the highest traffic volume and Cutrale had the lowest.

⁶ Neither surcharge was ever formally challenged. FMID submits that the surcharges were imposed well after most of the traffic had already been lost on the line and were intended as a last ditch effort to see if there was any prospect for profitable operations.

concludes that there are significant and effective transportation alternatives for any remaining traffic on the line.

FMID avers that it has remained open to any potential option that might save the Leesburg Branch, and that attempts to develop local government support for the line's rehabilitation and operation have been unsuccessful.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving FMID of the cost of maintaining a line that requires substantial rehabilitation and generates little or no traffic or revenue and by allowing FMRC to apply its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because the shippers have either relocated or are using alternative transportation. The only shipper (Ro-Mac) opposing the abandonment appears to be using alternative service as well.⁷ Nevertheless, to ensure that all shippers on the line are informed of our decision, we will require FMID to serve a copy of this decision on them within 5 days of the service date and certify to us that it has done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

FMID has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information

⁷ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on January 5, 2001. SEA notes that the National Geodetic Survey (NGS) has indicated that nine geodetic station markers may be affected by the proposed abandonment. Therefore, SEA recommends that if salvage operations are expected to destroy or disturb the nine geodetic station markers, then FMID must notify the NGS not less than 90 days prior to commencement of such operations. SEA also notes that the Florida Department of Environmental Protection (FLDEP) has indicated that FMID must submit a GIS-generated description of the right-of-way to allow FLDEP to determine whether hazardous materials waste sites are located within the right-of-way. Therefore, SEA recommends that FMID be required, prior to salvage activities, to consult with FLDEP specifically about guidelines and requirements for generation of an acceptable GIS description of the right-of-way. SEA further notes that the St. John's River Water Management District (SJRWMD) has indicated that activities affecting water quality, water supply, flood protection, and natural systems are subject to its review. Therefore, SEA recommends that FMID consult with SJRWMD prior to abandonment and secure all necessary permits prior to initiation of salvage or disposal activities. Finally, SEA states that the Florida Counties of Lake and Sumter (Counties) have not completed their review of the proposed abandonment. Accordingly, SEA recommends that FMID consult with the Counties prior to initiation of any salvage activities in order to address any concerns the Counties may have.

No comments to the EA were filed by the February 5, 2001 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources. As noted, FMID asserts that it owns the track structure and related materials on the line, but does not own the underlying real estate comprising the right-of-way. Therefore, public use requests are not appropriate because, after abandonment, FMID will not retain a transferable interest to which a public use condition under 49 U.S.C. 10905 could attach. See Florida Midland Railroad Company, Inc.--Abandonment Exemption--In Lake County, FL, Docket No. AB-325X (ICC served Feb. 2, 1990).⁸

⁸ Trail use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by December 14, 2000. We note that the FLDEP's Office of Greenways and Trails (OGT) has expressed interest in working with the Counties in pursuing acquisition of the abandoned rail corridor for conversion to a trail, and that the Withlacoochee Regional Planning Council (WRPC) states that the abandoned railroad right-of-way should be considered for nature trails, bicycle paths, and wildlife passageways. These interests were expressed in letters transmitted to the Board, and included as an appendix to FMID's

(continued...)

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that FMID shall: (1) notify NGS, not less than 90 days prior to commencement of salvage operations, if such operations are expected to destroy or disturb geodetic station markers on the line; (2) prior to salvage activities, consult with FLDEP specifically about guidelines and requirements for generation of an acceptable GIS description of the right-of-way; (3) consult with SJRWMD prior to abandonment and secure all necessary permits prior to initiation of salvage or disposal activities; and (4) consult with the Counties prior to initiation of any salvage activities in order to address any concerns the Counties may have.

2. FMID is directed to serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by March 5, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on March 25, 2001. Petitions to stay must be filed by March 12, 2001, and petitions to reopen must be filed by March 20, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), FMID shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by FMID's filing of a notice of consummation by February 23, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier

⁸(...continued)
environmental report. They do not constitute formal requests for a trail use condition within the meaning of our rules. Should OGT or WRPC wish to pursue a trail use condition, either or both may file a formal request under 16 U.S.C. 1247(d) in the form prescribed in 49 CFR 1152.29, along with a timely petition to reopen.

to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary